097.3
Z109 2R
#1603

RESTRICTED
RECEIVED
AUG 28 1944

OFFICE OF STRATEGIC SERVICES

Research and Analysis Branch

R and A 1603

120093

ENTAILED ESTATES LAW AND THE GERMAN PEASANT

DEPARTMENT OF STATE
REFERENCE DIVISION
FILE COPY
PLEASE RETURN
REF

Description

This report attempts to ascertain the social and economic effects of the Entailed Farm Legislation upon 700,000 peasants who have qualified as Entailed Farmers and to discover the reaction of the peasants to this Legislation.

RESTRICTED
1948 JAN 20 PM 3 58
RECEIVED
DEPARTMENT OF STATE
REFERENCE DIVISION

9 March 1944

"This document contains information affecting the national defense of the United States within the meaning of the Espionage Act, 50 USC 31 and 32, as amended. Its transmission or the revelation of its contents in any manner to an unauthorized person is prohibited by law."

Copy No. 50

RESTRICTED

TABLE OF CONTENTS

	Page
Summary	iii
I. Introduction	1
II. The Position of Entailed Farms in German Agriculture	3
III. Legislative Provisions	9
A. Inheritance in Pre-Nazi Germany	9
B. Competence as a Peasant	11
C. Restrictions on the Peasant's Freedom; Penalties	12
D. Limitations upon the Right of Disposal and Borrowing	15
E. Requirements for Qualification as an Entailed Farm	17
F. The Order of Inheritance of an Entailed Farm	24
IV. Organization of the Inheritance Courts	30
A. The National Entailed Farm Court	30
B. Regional Entailed Farm Courts	31
C. Local Farm Inheritance Courts	32
V. Conclusions	33
Appendix I. An Evaluation of the Entailed Farm Legislation	38
Appendix II. Joint Public Announcement of the Minister for Food and Agriculture and the Minister of Justice, 28 September 1940	48
Map showing density of Entailed Farms in the Old Reich	facing p. 8

Summary

The Entailed Farm Legislation (Erbhofgesetzgebung), applies to farms between 7.5-125 hectares, owned by peasants of Aryan stock. They are protected against foreclosure, and cannot be sold or mortgaged. The Nazis consider this legislation to be the keystone of their agricultural policy and have tried, unsuccessfully, to qualify the one million farms which fall within the area limitations.

The position of the 700,000 farms that have qualified does not justify the special consideration afforded them. This is particularly true for the period after 1937 by which time these farms began to suffer not only from a shortage of working capital, resulting from the legal ban on new loans, but also from an aggravated labor shortage; the highest amounts of labor per hectare are required by farms in this size group.

Adverse social and economic effects are a product of this legislation; land values have increased because the ban on the sale of Entailed Farms reduced the supply of land and social mobility in rural society has been restricted. Tenants are no longer able to become landowners through the purchase of parcels of land which were available under a system of joint inheritance. Furthermore the Entailed Farm Legislation has created a caste of landowners consisting of the designated heirs and their offspring, to the exclusion of the remaining relatives. In a period of full production this latter group has found employment in industry but in a period of declining production they will constitute a serious social problem.

This legislation permits an abuse of power by the Local Peasant Leaders who in collusion with special Trustee Associations and the Local Farm Inheritance Courts may, and do control farms of peasants declared guilty of bad management.

ENTAILED ESTATES LAW AND THE GERMAN PEASANT

I. INTRODUCTION

The Entailed Farm Legislation has been characterized by Nazi Peasant Officials as the keystone of rural policy. Therefore the effectiveness of the total farm program hinges to a great extent upon the success which this legislation has attained in solving the social and economic problems immediately affecting the Entailed Farm owners.

The provisions of this legislation as contained in a special peasant program of 1930 undoubtedly contributed to the large majorities won by the Nazis in rural areas in the closing years of the Weimar Republic and committed the Nazis to an implementation of this program when they gained power in Germany.

The Limited Inheritance Laws were satisfactory to the peasants as an adjustment to the economic crisis inherited by the Nazis from the Weimar Republic and until 1937 the Entailed Farmers did constitute an elite group in the rural population.

Since 1937, however, they have either lost their special position by extension of restrictions on sale of land to other farms, for example, or privileges have become liabilities. For instance the ban on mortgages makes it impossible for the Entailed Farmer to acquire badly needed

funds, for the building up of inventory however limited the supply may be.

At present they, as well as other farmers, are subject to the arbitrary exercise of power by the local peasant leader who has the right of appointing trustees for badly managed farms or farms declared to be badly managed. The local peasant leader works in collusion with Agricultural Trustee Unions to place farms under their control and enjoy usufruct from them.

Land prices have risen because the supply of land has been reduced by the withdrawal of Entailed Farms from the market and social rigidity in the rural population has appeared, both because non-inheriting members of Entailed Farms are excluded from ownership, and because tenants are no longer able to purchase parcels of land made available by division of farms among all heirs and the sale of parts of such divided land in the open market.

A survey of litigation in the local Farm Inheritance Courts, involving the appointment of trustees for badly managed farms, is not conclusive as an index to the peasant's opposition to his loss of preferred status; less than 5 percent of the Entailed Farms in nine Peasant Associations were so involved between 1937 and 1942.[1]

1. See Appendix I.

In conclusion, however, it appears that the Entailed Farm Legislation, since 1937, has been an instrument for more effective exploitation of the land and not a means for maintaining privileged peasant groups.

II. THE POSITION OF ENTAILED FARMS IN GERMAN AGRICULTURE

The Entailed Farm Legislation, Reichserbhofgesetzgebung, limits the inheritance of farm land between 7.5 and 125 hectares (19 and 309 acres) to a single heir and prohibits the mortgage, sale, or lease of such land.[1]

The pattern for this legislation stems from the custom of limited inheritance which had prevailed in four-fifths of Germany[2] and was anticipated both in the Party Announcement of the Position of NSDAP towards the Rural Population and Agriculture[3] and in the Prussian Peasant Inheritance Law of 15 May 1933, Das preussische bäuerliche Erbhofrecht.

Sharp controversy has surrounded the execution of this legislation. One group headed by Walter Darré, stressed the romantic past of the German peasantry, coined the term Blood and Soil (Blut und Boden) and depicted the farmer as the Source of Life of the German Nation (Lebensquell des

1. Reichserbhofgesetz, 29 September 1933, cited hereafter as REG; Erbhofrechtsverordnung of 21 December 1936; 23 December 1938; 26 April 1939; 28 September 1940; 1 October 1943; and 14 January 1944; cited below as EHRV; Erbhofverfahrensordnung, 21 December 1936 and 26 April 1939 cited hereafter as EHVO.
2. See below.
3. Recht des Reichsnahrstandes, 1938, p. 489 f.

deutschen Volkes).[1]

The second group, led by Herman Backe,[2] realized the inconsistency between the peasant form of land organization in small scattered parcels, the product of political and economic forces of the 18th and 19th centuries, and the exigencies of food production geared to the latest types of 20th century scientific methods.

In May 1942 Darre was supplanted in practice as Minister for Food and Agriculture by Backe;[3] the magazine Odal was replaced by Agrarian Policy (Agrarpolitik) and the Division "Farm" (Hof) of the Food Estate was dissolved.[4]

---

1. The main source for this point of view is the magazine Odal; the name is derived from a "model" Norwegian Entail Law. Odel og Aasaetsrett, Allodial and Primogeniture Law of 1821. The term Odel means Allodial and not Entail. The novel, Both Farms (Die Beiden Höfe) by Hermann Löns dramatizes the Entailed Farm Law in the same vein.
2. Both Darre and Backe are foreign born; the former is from South America, Backe from the Ukraine.
3. This minister is simultaneously National Peasant Leader in direct control of the Food Estate (Reichsnährstand), which has been a division of the Ministry for Food and Agriculture since 1939. The Ministry has joint jurisdiction with the Ministry for Justice over land questions.
4. This Division had been concerned primarily with the dissemination of Darre's romanticism. In Backe's first speech as Peasant Leader he attacked this policy and announced that control of rural propaganda was a function of the National Office for the Rural Population (Reichsamt für das Landvolk), a party agency.

Actually the victory of the more realistic faction had been foreshadowed by the following legislation, which forms with the Entailed Farm Law the basis for National Socialist policy in rural matters:

(1) Law for the Temporary Establishment of the Food Estate and Measures for the Regulation of Prices and the Marketing of Agricultural Products (Gesetz über den vorläufigen Aufbau des Reichsnährstands und Massnahmen zur Markt und Preisregelung für landwirtschaftliche Erzeugnisse, 13 September 1933). All organizations concerned with agriculture were brought under the Food Estate; prices were fixed and marketing regulated by Marketing Associations and Bureaus under the same agency.

(2) Law for the Reconstruction of the German Peasantry (Gesetz über die Neubildung deutschen Bauerntums, 14 July 1933). New peasant farms were to be created in continuation of the settlement policy of the Weimar Republic.

(3) Law for the Regulation of Agricultural Debt Relations (Gesetz zur Regelung landwirtschaftlichen Schuldverhältnisse, 1 June 1933). This was designed to re-finance agricultural debts and based them on capacity to pay; a special law applied to Entailed Farms.[1]

(4) Land Reapportionment Law (Umlegungsgesetz, 26 June 1936). An authorization for the re-grouping of land parcels.

(5) Law for the Coordination of Measures for the abolition of the Law of Primogeniture (Gesetz über das Erlöschen der Familienfideikommisse und Sonstiger Gebundener Vermögen).[2] This law was to implement Nazi

---

1. Law for the Expansion of the Debt Regulations, Gesetz zur Ergänzung des Schuldenregelungsgesetzes, 27 June 1934 RGBl p. 524, clarified the status of the Entailed Farm.

2. 14 December 1939, 14 November 1940, and 24 October 1941, RGBl, I. p.2417, 1489, part 1 p. 661 for years indicated.

promises to dissolve the large estates in the East Elbian area. They are inherited by the eldest son and are not to be divided or alienated. The legal basis for this type of land tenure in contrast to the Entailed Farm Law is a special body of law which has been carried over from the Middle Ages.

The Nazis have not dissolved these holdings but have postponed the date on three different occasions.

In 1940 the Entailed Farm Legislation affected the interests of 2,697,843[1] persons who comprised families living on 715,608[2] Entailed Farms. Under the terms of this legislation, therefore, at least 982,234 persons are excluded from any claims to the inheritance of the land on which they live. It must be remembered, however, that from pre-Nazi days four-fifths of Germany's rural area carried the right of voluntary limited inheritance by custom or law. Such a tradition is thus familiar to most of the non-inheriting children although theoretically they fared much better under the Weimar Republic;[3] in that

1. This figure is the product of the average number of persons per family in communities under 2,000 in 1939 multiplied by the number of Entailed Farms in 1940.
2. Wochenblatt der Landesbauernschaft Nieder Sachse, 14 March 1942, p. 225. No break-down of this figure is available; hence reliance must be placed in the detailed report for 1938.
3. This statement is subject to dispute. The amount of return does not necessarily exceed the total compensation received by heirs under the Entailed Farm Legislation in the way of board, lodging, education, and preparation for a profession plus the right of return to the farm (Heimatszuflucht). See below.

the system of "compulsory portions guaranteed money shares to all heirs." Often this provision forced the inheritor of a farm to mortgage it to pay these claims.

In 1933 about one million farms were considered eligible for Entailed Farm status, but by 1938 only 684,997 or 68 percent of the anticipated number had been authorized and entered in the land registers of the Local Hereditary Farm Courts (Anerbengerichte).[1] These farms included 15,561,873 hectares or 88 percent of the area eligible for inclusion and the average size was 23 hectares with over 50 percent of them falling within the group of 20 hectares or less.[2] The heaviest incidence of these farms was in Schleswig-Holstein, East Prussia, and Oldenburg with percentages of 46, 37, and 36 respectively.[3]

This heavy concentration is explained by the fact that these are regions where limited inheritance has been customary. Furthermore in Schleswig-Holstein and Oldenburg, individual farms on the North American pattern are in the majority.[4]

---

1. Wirtschaft und Statistik, March 1939, p. 166.
2. Ibid.
3. Ibid.
4. Bartel Huppertz. Räume und Schichten bäuerlicher Kulturformen in Deutschland, p. 120 f.
   Most of the German farming communities consist of villages which are separate from the fields which are scattered in strips outside of the dwelling area.

THE DISTRIBUTION OF ENTAILED FARMS IN THE OLD REICH AND THE SAAR[a]

Region	Number of entailed farms	Area in hectares	Percentage of total farms[b]	Percentage of total area
East Prussia	49,789	1,418,121	36.6	41.1
Berlin	105	1,673	4.8	4.6
Brandenburg	40,582	1,112,992	26.3	32.3
Pomerania	44,324	1,049,475	34.4	29.4
Silesia	52,199	979,790	22.6	28.9
Saxony	36,161	875,704	22.4	39.5
Schleswig-Holstein	30,424	853,651	46.2	62.1
Hanover	70,053	2,009,329	29.4	61.2
Westphalia	36,947	896,112	23.2	50.7
Hesse-Nassau	17,535	277,541	10.7	19.4
Rhineland	18,149	301,930	8.2	15.6
Hohenzollern-lande	867	13,998	8.1	13.7
Prussia (total)	397,135	9,790,316	23.7	37.6
Bavaria	159,811	3,160,632	28.7	46.1
Saxony	33,475	619,200	33.4	46.4
Württemberg	24,400	439,477	11.2	25.6
Baden	9,248	209,051	5.5	16.6
Thuringia	17,849	329,708	17.7	32.2
Hesse	8,418	112,905	9.9	17.5
Hamburg	677	15,216	14.0	40.4
Mecklenburg	9,391	312,615	20.4	22.2
Oldenburg	13,210	312,389	35.7	67.9
Brunswick	5,434	122,435	20.3	37.8
Bremen	398	11,079	29.7	69.7
Anhalt	2,495	57,795	19.1	28.2
Lippe	1,873	49,405	14.6	45.5
Schaumburg-Lippe	803	14,167	18.3	51.0
Saarland	380	5,483	1.3	3.9
Total	684,997	15,561,873	22.3	37.4
Total in 1940	715,608[c]			

a. Wirtschaft und Statistik 1 March 1939 p. 167.
b. Excluding land owned by private and public corporations.
c. Wochenblatt der Landesbauernschaft Niedersachsen 14 March 1942.

By both tradition and expediency -- i.e. the need for operating the farm from a central point -- owners of these individual farms have willed their property to a single heir. The same facts explain the location of the highest incidence of Entailed Farms in the district of Vilsbiburg in Lower Bavaria where 82 percent of the total farm area is contained in Entailed Farms.[1]

Much of the increase in the total number of Entailed Farms indicated in the table is due to the organization of 18,952 new units under the Land Settlement (Siedlung) program between 1933 and 1938.[2] Special efforts have been made to include them under the Entailed Farm Legislation.

III. LEGISLATIVE PROVISIONS

A. Inheritance in Pre-Nazi Germany

In pre-Nazi Germany two major types of land inheritance had prevailed.[3]

1. The Region of Limited Inheritance (Anerbengebiete). Farms were inherited as a unit and by one heir. This form of inheritance applied in about four-fifths of the Old Reich.[4] In the Province of Hanover, e.g. a Farm Law of 1909 permitted voluntary registration as a basis for limited inheritance.

---

1. Wirtschaft und Statistik, loc. cit., page 167.
2. Vierteljahrshefte zur Statistik des Deutschen Reichs, vol. 3, 1938, page 25. New farms are organized by Land Settlement Companies from reclaimed land or from parcels purchased from the large estates.
3. The Burgerliches Gesetz Buch contains no regulations but left farm inheritance to the states.
4. Robert Lorenz.

The same system was introduced in Westphalia, Silesia, the District of Lauenburg, in Brandenburg, Schleswig-Holstein, and in Cassel[1] while in Saxony 70-75 percent of the land was bound by limited inheritance agreements.[2]

Limited inheritance by custom included additional areas; parts of Baden (Schwarzwald) and some areas of Württemberg, Bavaria, and Hesse.[3] In addition agitation for limited inheritance legislation on a national basis began in the 1870's and was supported by the Land Federation, Reichslandbund and many peasant organizations.[4]

In only one instance was compulsory limited inheritance instituted. This was provided in the Settlement Legislation of 1896 which required that all farms established with funds of the state be inherited by a single heir. This was done to fix responsibility for repayment of settlement loans in a single individual.[5] With this exception, adherence to the custom of limited inheritance was voluntary and in the last analysis depended on the whim of each farm owner of this area.

There are no complete statistics showing the number of Entailed Farms for the period prior to 1933 but for

1. Justus Wilhelm Hedemann. Die Fortschritte des Zivilrechts im XIX Jahrhundert, part 2, p. 161.
2. Ibid., p. 136. Staatslexikon 1926, vol I. Anerbenrecht.
3. Ibid., p. 136 and 161.
4. Ibid., p. 133f.
5. Ibid.

Prussia up until the outbreak of the last war 150,000 farms had been entered in the Land Book and were thus brought under limited inheritance.[1] In Baden there were about 5,000 entries.[2] The number of such farms was of course much larger because many farmers never bothered to register them.

2. The Region of Divided Inheritance (Realteilungsgebiete). This area embraced the Middle and Upper Rhine areas, a district of fertile soil and high population density. The French Civil Code had been introduced here more than a century ago and consequently all heirs inherited the land jointly and over a period of years the farms have been divided and re-divided into small parcels.

Divided inheritance has worked with some degree of success in this region because the owners of small parcels have been able to supplement their incomes by part time work in neighboring factories.

B. Competence as a Peasant (Bauernfähigkeit)[3]

1. Every owner of an Entailed Farm must be a German citizen; he must be "honorable." This is an omnibus term and assumes the existence of a peasant code of honor. As elaborated by court decisions, a peasant violates this code

1. Hedemann, op. cit. p. 133.
2. Ibid. p. 136.
3. EHHV Section 5 and REG, Section 12, 13.

if guilty of excessive drinking, membership in Jehovah's Witnesses (Ernste Bibelforscher) or for dealing with a non-Aryan trader, etc.[1]

2. He and he alone bears the honorary title of peasant, Bauer while other landowners are called farmers, Landwirte.

3. The peasant must establish Aryan ancestry as far back as 1800.[2] His geneaology is scrutinized in thorough fashion by the Bureau for Family Research, Reichsstelle für Sippenforschung. On one occasion, for example, it disqualified a peasant whose ancestor had married a native woman in Surinam, Dutch Guiana in 1820.[3]

4. The peasant must be capable of efficient farm management and must pay his debts if the income of his farm allows.[4]

The Local Farm Inheritance court can deprive the peasant of his rights for non-payment of debts even though in theory the peasant cannot be deprived of his land.

C. Restrictions on the Peasant's Freedom; Penalties:[5]

1. Expulsion (Abmeierung; grosse Abmeierung); the Entail Court, Anerbengericht, upon recommendation of the local peasant leader (Ortsbauernführer) might order the eviction of a peasant deemed guilty of faulty farm management, of violating the honor of his estate or of failing to pay his debts when he possessed the means to pay them. The

1. RdRN, court decisions 1934-1941; a farmer who aided his wife in an abortion and was jailed for it in 1933 was ineligible for Entailed Farm Status because he had violated the honor of his estate. Inheritance Court Celle, September 1939; cited in RdRN, September 1939.
2. Accepted as the date for Jewish Emancipation.
3. RdRN, July 1938, h. 13, p. 562.
4. REG, Section 15.
5. A basis for these penalties exists in the Prussian Law of Primogeniture of 24 April 1930 which states that mismanagement of an estate is a cause for transference of administrative rights.

court might substitute another person recommended by the same official.

2. Kleine Abmeierung was a milder form of punishment which did not deprive the peasant of ownership but transferred the usufruct to an heir.[1]

3. Economic Supervision, Wirtschafts überwachung;[2] In 1936 new and reputedly milder punitive measures were enacted. Actually the aim of the revised policy has been to enforce conformity to the Law without forcing the peasant from the land and thus permitting him to evade all responsibilities.

A trustee is appointed in cases where a peasant has been declared guilty of inefficient management or has been delinquent in the payment of debts. The trustee is appointed by the Inheritance court upon the recommendation of the Regional Peasant Leader (Landesbauernführer); he is appointed for a definite period subject to renewal by the same authorities.[3]

The trustee is to see that production is increased and that creditors are paid. Measures suggested by him for the better management of the farm must be followed and he is to be compensated for any expenses incurred in the course of his supervision.[4]

4. Economic Direction (Wirtschaftsführung) is initiated in similar fashion and when Economic Supervision is deemed

1. REG, Section 15 paragraph 1-4.
2. Erbhofverfahrensordnung Sec.73, par. 73, 21 December 1936.
3. Ibid., Periods of trusteeship vary from 2-12 years.
4. A compensation of RM 80 per month was allowed a trustee for transportation to and from the farm under his supervision. RdRM, January 1938, p. 29.

insufficient. A trustee is appointed for a definite period and, in contrast to the category mentioned above, the peasant loses the power of disposal of the farm as well as the management of the farm. The trustee takes possession, administers the farm, its revenue and enjoys the right of disposal.[1] According to a ruling of the Regional Entail Court (Landerbhofgericht) for Prussia, in Celle, a trustee is empowered to dispose of or to mortgage parts of the farm to defray debts, if the condition of the holding is not endangered thereby.[2]

The peasant and his family must be assured support and living space for which they are required to continue work on the land. All measures against faulty farm management are Staatshoheitsakte (acts of Sovereign power) and no court review is therefore allowable.[3]

5. Withdrawal of Administration and Usufruct.[4] This is equivalent to the Kleine Abmeierung mentioned above and is used only occasionally. The administration of a farm may be transferred to an heir, wife, or to a trustee.[5]

A peasant may be declared incapable and be deprived of usufruct for sickness, old age, immorality, or failure to deliver crop quotas.[6]

1. Ibid., Section 79.
2. Quoted in Wochenblatt der Landesbauernschaft Sachsen-Anhalt, 22 August 1942.
3. RdRM, February 1938, p. 115.
4. RHFO Section 85, 94
5. Ibid., Section 86.
6. Cf. decisions of Inheritance Court Celle, cited in RdRM 1937 ff. The greatest emphasis is placed on crimes against the Battle for Production of Food.

Since the outbreak of war the penalties have been intensified. One decision states that even if a peasant has ability and takes great pains to achieve the highest possible production of which he is capable, a trusteeship may still be established to assure the accomplishment of specific war jobs assigned to agriculture.[1] Other decisions in Recht des Reichsnährstandes for 1939-1941 are in similar vein.

This intensification of penalties for faulty management is in line with an ordinance of 1941 which empowered the Ministers of Justice and the Minister for Food and Agriculture to appoint an heir other than the legal one if the productive capacity of the farm was improved thereby.[2]

D. Limitations upon the Right of Disposal and Borrowing

The Entailed Farm is fundamentally inalienable and cannot be burdened with debt without the permission of the Inheritance Court. However a distinction in inheritance practice is drawn between (1) the farm and its inventory and (2) the residue such as cash, bonds, jewelry, etc. The former is governed by the Entailed Farm Legislation and the latter by the general laws of inheritance in the Civil Code.[3]

1. Ban on Mortgages on Real Property. No approval is

1. Reichserbhofgericht, 29 July 1942, quoted in Wochenblatt der Landesbauernschaft Schlesien, 31 October 1942, p.1.
2. Verordnung über Erbhofrecht, 22 January 1941.
3. REG, Section 37 and Bürgerliches Gesetzbuch, Section 2058.

necessary for loans for the regrouping of land parcels, for settlement expenses -- where an Entailed Farm has been created under the terms of new settlement legislation -- or where the owner has acquired the holding through an official auction or transfer.[1] Where an Entailed Farm is involved in refinancing under the terms of the debt regulations of 1 June 1933, it may be mortgaged to the Bank for German Industrial Loans (Bank für deutsche Industrie-Obligationen) or financed with mortgages held by the State.[2]

2. Protection against Foreclosure. A money claim cannot be the basis for foreclosure against an Erbhof unless this foreclosure involves non-payment of public taxes, contributions to the Food Estate or to cooperatives.[3] Produce, however, may be attached so far as it is not essential for the proper operation of the farm;[4] claims for the attachment of the proceeds of the sale of products, rent, or income from leases controlled by the peasant are under the same restrictions as claims upon the agricultural products themselves.

The State, of course, enjoys the right of Expropriation,[5] and the yield of the farm and any other sources of income may be placed in bankruptcy proceedings to satisfy

1. RGBlS, 1937, p. 862.
2. EHRV, Section 32.
3. REG, Section 38 and Baumecker, op. cit. p. 46, note I.
4. REG, Section 39.
5. R.G. Gesetz über die Errichtung eines Unternehmens Reichsautobahnen, 1933 (RGBl., II, p. 509.

a lien on the real property.[1] This cannot be done, however, if the Entailed Farm constitutes the major portion of the inheritance.[2]

E. Requirements for Qualification as an Entailed Farm

1. Individual Ownership. An Entailed Farm must be owned by an individual;[3] all property owned by cooperatives, religious institutions, and corporations is ineligible for inclusion.[4] However, jointly-owned Entailed Farms jointly owned by husband and wife (Ehegattenerbhöfe) are legal under the law of 1 October 1943.[5] This decree strengthened the limited recognition which they had attained in the legislation of 1936, Sections 17-25.

As a result of the restriction on corporatively owned property 4,877,327 hectares of arable land of a total of 30,355,098 hectares, in 1937, could not qualify for Entailed Status.[6] Most of this land was rented out by its owners.

1. Sections 99,100, BGB and Baumecker, op. cit. p. 572.
2. Sections 37 and 38, REG.
3. REG, Section 1.
4. Recht des Reichsnährstandes, August 1939, p. 685 decision of Erbhofgericht at Celle.
5. Völkischer Beobachter, 1 October 1943.
6. Wirtschaft und Statistik, 1 December 1937.

2. Maximum Size. A maximum area of 125 hectares was fixed in the original law of 1933 with exceptions to be granted by the Minister for Food and Agriculture.[1] Under this provision 1,086 farms over 125 hectares, with a total of 208,600 hectares had qualified as Entailed Farms by 1938.[2]

Distribution of Entailed Farms over 125 Hectares in Area in 1935

Region	Number	Area in hectares
Rhine Province	3	505
Pomerania	16	2,854
East Prussia	86	14,296
Saxony	1	152
Total for Prussia	382	81,374[a]
Bavaria	1	287
Thuringia	5	962
Oldenburg	5	1,008
Bremen	1	386
Total for the Old Reich	394	101,824 hectares

a. No further regional breakdown is given for Prussia: hence the total for Prussia is not a product of the figures given for the individual Prussia States listed above.
b Deutsche Justiz, 16 October 1936, page 1,565.

1. Reichserbhofgesetz, Section 3, cited hereafter as REG.
2. Wirtschaft und Statistik, 1 March 1939, page 166.

Several modifications in the basic law facilitate the admission of large estates. A Fideikommisse, a large estate governed by laws of primogeniture, may qualify without conforming to the general debt limitation of 70 percent of the taxable value of the farm,[1] i.e. no ordinary farm may qualify if its debts exceed this percentage.

The maximum size was fixed at 125 hectares because this legislation was designed to benefit the middle farmers. The greatest number of farms above this figure is owned by the Junkers and protected by special inheritance laws and provisions for the refinancing of old mortgages.[2] Apparently those 1,086 estates which were admitted to Entailed Farm status were the heaviest burdened of the Junker holdings, since the debt limitation of 70 percent of the taxable value did not apply to them. They were admitted to get the protection which the Entailed Farm Legislation afforded, and which it appeared the estates had lost in the decree for their dissolution.

In October 1943 mountain farms over 125 hectares were exempted from the restrictions,[3] and in 1944[4] the main obstacle to the admission of Fideikommisse was removed; namely that a prospective Entailed Farm be managed as an administrative unit and not from the outside.[5] This provision

1. Erbhofrechtsverordnung, Section 1, cited hereafter as ErbhV.
2. The refinancing of the East Elbian Estates (Osthilfe) of 1931 converted short term mortgages into long term ones with a reduction of interest to 4½ percent. In extreme cases the capital debt was reduced.
3. Völkischer Beobacter, 1 October 1943 and News Digest #1256 quoting DNB 1 October 1943.
4. News Digest 1348, quoting Neue Deutsche Zeitung, 20 January 1944.
5. REG Section 5.

had excluded the East Elbian Estates which in the main consist of a conglomeration of parcels of land controlled by the estate owner from the Manor house.

In addition, if an estate over 125 hectares is owned by a family which is especially deserving because of its contribution to the German Nation or if such an estate contains monuments of historic significance it is eligible to become an Entailed Farm.[1]

3. Minimum Size. The minimum size must be an Acker Nahrung, i.e. a farm must contain enough land for the support of a family and for the production of a surplus in crops.[2] The minimum size, in theory, is relative to the soil and climatic conditions. In 1938, 20,067 or 2.9 percent of the Entailed Farms were under 7.5 hectares in area.[3] This category appears too small for purposes of survival; in some areas e.g. in Lower Saxony, every sixth Entailed Farm of 7.5 hectares has been supplemented by leased land.[4] The majority of Entailed Farms, however, is in the higher category of 7.5-20 hectares,[5] in contrast to the Prussian Inheritance Law[6] which had fixed the minimum size at 7.5 hectares. Several court decisions have defined lower or higher minima[7] and it is even possible to have different norms within the same area.[8]

---

1. Ibid.
2. REG, Section 3.
3. Wirtschaft und Statistik, 1 March 1939, page 166.
4. Wochenblatt der Landesbauernschaft Niedersachsen, 31 May 1941.
5. Wirtschaft und Statistik, op. cit., page 166.
6. This law anticipated the Reich legislation by about four months. It was framed in May 1933 by Darré, Backe, and Willikens, all holders of positions in the Food Estate, and Hans Kerrl who was appointed Prussian Minister of Justice in 1933.
7. The Landeserbhofgericht Stuttgart fixed a minimum of 6 hectares (RdRN, 1934, p. 468) while in other cases 20 hectares was declared too small. Juristische Wochenschrift, 1935, page 315.
8. RdRN, 1935, page 384.

4. Leased Land Cannot Qualify as an Entailed Farm. Land held on lease in general cannot qualify as Entailed Farms.[1] However, there are exceptions to this ruling. In Mecklenburg are found various types of hereditary tenant farms which have been the subject of special legislation. This provides that usufruct be changed into free ownership without compensation to the former owner.[2] As a result of this change, such lands are eligible if they conform to the other requirements for an Entailed Farm. In Prussia, the Marsh Settlements[3] (Fehnkolonien) are in similar pattern. They are controlled by the Marsh Settlement Association, Fehngesellschaft and are eligible for Entailed Farm Status.[4]

5. The Leasing of Entailed Farms. This category applies to farms of Entailed Status which their owners may seek to rent to tenants. There was no ban against leasing in the original law but so many peasants sought to escape personal responsibility for their land by leasing it to sons or relatives and retaining usufructuary rights alone that it became necessary to permit leasing only with the consent of the local Farm Inheritance Court.[5]

In 1936, 2,118 leasing permits were granted to Entailed Farmers[6] and it has been estimated that 26,000 leased farms

1. ErbHV, Section 45 and Otto Baumecker, Handbuch des Grossdeutschen Erbhofrechts, page 709.
2. RdRN, 1936, page 174 and Erbhofausfuhrungsgesetz, 5 May 1938.
3. They are colonies established on land reclaimed from marsh settlements, and financed by Settlement Associations.
4. Baumecker, op. cit. page 708 and RdRN, 1936, page 174.
5. ErbHV, Section 30.
6. K. Hopp. "Erbhofrecht in Zahlen," Deutsche Justiz. 16 October 1936, page 1,564.

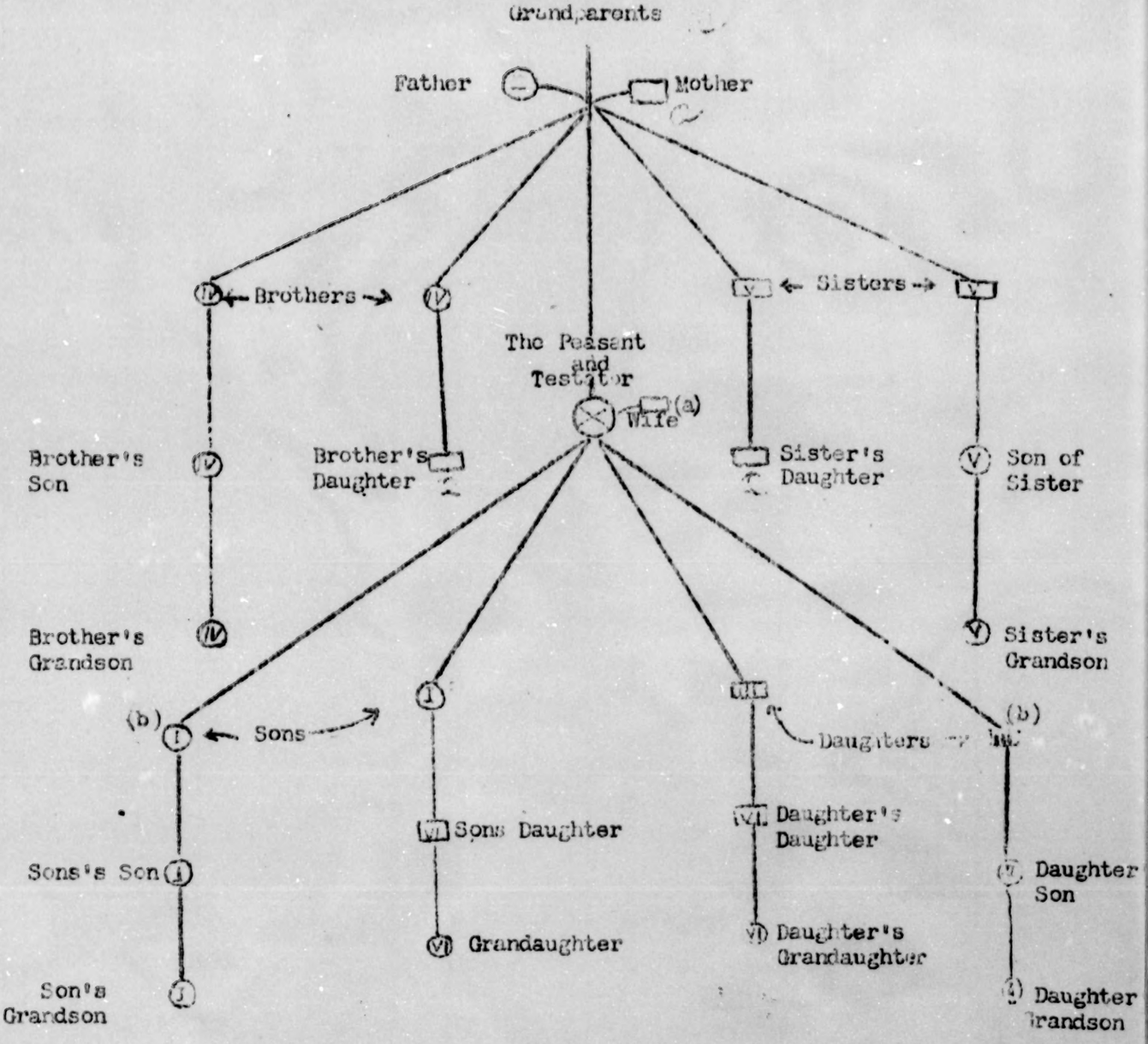
are within the size group 7.5-125 hectares.[1] Some of these cannot qualify because they are held by tenants.

The prohibition on the leasing out of Entailed Farms extends to all forms of land transfers, gratuitous or not, as well as the leasing of other rights pertaining to the farm.[2]

In cases of farms under the management of trustees, appointed by an inheritance court, the above limitations do not apply.[3] This exemption is due to the possible necessity of leasing out the farm to secure better production.

1. RdRN, March 1936, page 214.
2. W. Sauer, "Agrarpolitik und Landpachtprobleme" RdRN, 1936, page 714.
3. Decision of Landeserbhofgericht Celle quoted in Wochenblatt der Landesbauernschaft Sachsen-Anhalt, 22 August 1942.

Chart I. ORDER OF INHERITANCE UNDER ENTAILED FARM LEGISLATION AS OF 1 OCTOBER 1943



○ Male family members.
▭ Female family members.
Q Belonging to no legal order of inheritance.

a. Under law of 1 October 1943, the testator may will the farm to the wife but the following order of inheritance must be rooted in the farm, i.e., in the line which had controlled it.
b. The existence of youngest or oldest right of inheritance is the determinat.

Roman numerals indicate the order of inheritance.

F. The Order of Inheritance of an Entailed Farm

The Civil Code contains no provisions regulating the inheritance of agricultural and forest land but left the problem in the hands of the states. The only limitation upon this delegation of power was that there be no restriction upon the right of the testator to dispose of his landed property by will.[1] This was changed by the Entailed Farm Legislation.

1. Inheritance of the Farm and Its Inventory. A single heir inherits in the following order of precedence[2] and as indicated in the accompanying chart.

a. The son of the owner, his son and grandson.

b. The father of the testator.

c. Daughters and sons of daughters, and daughters' grandsons.[3]

d. Brothers and their sons and sons' sons.

e. Sisters of the testator and their male offspring.

f. Female offspring and their offspring not included in c. Those most closely related to the agnate branch have priority.[4]

The testator may determine the inheritance within the first order if limited inheritance is not the custom in his

1. BGB, p. 2045, EG 64
2. RLG, Section 20.
3. An ordinance of 30 September 1943 placed the daughters ahead of the brothers of the testator. Völkischer Beobachter 1 October 1943.
4. RLG, Section 20.

community or if free choice of the heir prevails.[1] Otherwise the eldest or youngest son inherits depending upon location in the areas of eldest or youngest orders of inheritance. Regions of Ältesten or Jüngstenrecht, see Chart II, have been fixed by the Ministers of Justice and Agriculture.[2] If no usage prevails the youngest son inherits.[3] Chart IV illustrates this problem.

In other words there are five factors determining which son is to inherit. (1) If the farm is located in an area of customary limited inheritance where by usage the eldest son inherits. (2) If it is in a region of the custom of limited inheritance and by usage the youngest son inherits. (3) If it is in a region of limited inheritance but with no custom of inheritance by youngest or eldest son. (4) If the locality was formerly accustomed to free disposal, i.e., joint inheritance. (5) If the area had limited inheritance but also the right of free designation of the heirs.

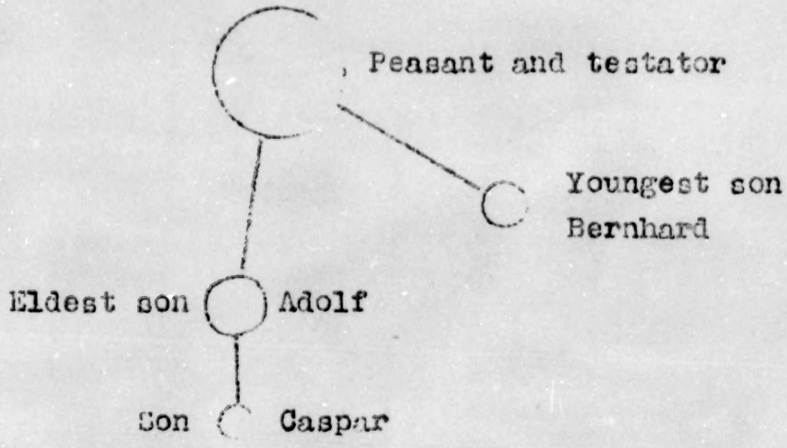
In the cases of (1) and (2) the heirs are determined as indicated; (3) the youngest son inherits; (4) and (5) the heir

1. REG, Sections 25 and 33. The right of the testator to fix succession in the agnate branch apparently has been restricted by the decree of 1 October 1943 which places the daughter and her sons in the third instead of the fourth order of inheritance. REV, Section 16 appears therefore to be of limited importance.
   According to the same ordinance of 1943, the farmer may will the farm to his wife on the theory that most eligible heirs are in the army.
2. ZAK, October 1940, pp. 549 ff. See appendix.
3. REG, Section 21.

may be selected by the father.

The regions are designated in the appendix.

Chart II



In a region where the custom of inheritance by the eldest son, Ältestenrechts, prevails, the owner has two sons. Adolf the elder son died before his father. Adolf's son Caspar inherits the farm. In a region of inheritance by the youngest son, Jüngstenrechts, Caspar would receive no consideration.

Baumecker, op. cit. See appendix for a delineation of the areas of eldest and youngest customs of inheritance.

If no heirs are available the inheritance court shall advertise in the official weekly of the relevant Regional Peasant Association (Landes-bauernschaften).[1]

Exigencies of war have strengthened the rights of a widow or widower in an Entailed Farm.[2] He or she may re-marry

1. A survey of the Wochenblatt der Landesbauernschaft Bayern from 1934-1941 reveals that each advertisement appeared in only one issue.
2. Verordnung zur Fortentwicklung des Erbhofrechts Völkischer Beobachter, 1 October 1943.

and the husband, e.g., enjoys rights of administration and must be consulted if the wife should seek permission to dispose of the farm. He continues to exercise administration until the 25th year of the heir who must be drawn from the original family of the farm involved.

As indicated above a liberalizing of the position of jointly-owned Entailed Farms, Ehegottenerbhöfe has been introduced.[1] The surviving member of the marriage enjoys usufruct, but in contrast to the previous law, the heir must be of the family from which the farm stemmed.[2] However, as stated before in the the final analysis the state can fix the order of inheritance[3] or change an order which causes undue hardship.[4]

2. The Inheritance of the Personal Property of the Testator.

a. Order of Inheritance. The legacy available, apart from the farm and the inventory, is inherited according to provisions of the Civil Code.[5] This means that such property is inherited by all the heirs of the testator in the following order:[6]

1. Ordinance of 1 October 1943. The original law of 1933 made no allowance for the many jointly-owned farms in Westphalia, Hanover, Oldenburg, and Württemberg. In the Rhineland, wife and husband often owned some parcels separately and others jointly. This was rectified in EHRV, Section 17.
2. Ordinance of 1 October 1943 in contrast to EHRV, Section 20 which allowed the heir to be drawn from either branch.
3. Verordnung über Erbhofrecht 22 January 1941.
4. Verordnung, 23 December 1938.
5. REG, Section 33.
6. Bürgerliches Gesetzbuch, Section 1922, cited hereafter as BGB.

(1) The children and the wife; the latter receiving one-fourth of the residue.[1]

(2) Parents of the testator if no children are available.[2]

(3) Grandparents or great-grandparents and their descendants;[3] the wife inherits one-half of the residue under categories two and three.

The testator may fix the inheritance by will, but any child, wife, or parent excluded by such a will may demand a share from the heir or heirs. This amounts to one-fourth of the share, which would have been received if this person had been included in the will.[4]

b. Liens upon the Personal Effects of the Testator. All liabilities on the legacy, including mortgages on lands not a part of the Entailed Farm, are to be paid out of the personal property of the testator,[5] and the inheritor of the farm is liable as a joint heir for liens on the personal property.[6] The Entailed Farm enjoys no special protection with reference to the settlement of claims on this legacy apart from the special protection against foreclosure;[7] bankruptcy proceedings

1. BGB, Section 1924
2. Ibid., Section 1925.
3. Ibid., Section 1926.
4. BGB, Section 2303.
5. REG, Section 34.
6. EHRV, Section 14.
7. REG, Section 19; Protection against foreclosure is provided in REG, Sections 33, 39, and 59.

however, may be initiated against the crops as long as efficiency of the farm is maintained.[1]

3. Obligations of the Heir to the Other Relatives of the Testator.

a. Support for the Children of the Testator.[2] They are to receive support and education and are to be trained in a trade or profession, while the female offspring are to receive dowries. In case of need the children may return to the farm (Heimatzuflucht) to live if they become destitute through no fault of their own and agree to work.[3] The same right is enjoyed by the parents of the testator, only if there are none of his children[4] at hand.

b. Share of the Surviving Spouse (Altenteil). The surviving spouse who relinquishes all claims to a legal share of an inheritance is entitled to support for life if he or she has no independent source of income.[5]

As suggested above, the position of the surviving spouse is strengthened by recent legislation which permits him or her to inherit a farm by will during the minority of other eligible heirs.[6]

1. BGB, Sections 99, 100, and REG, Sections 37 and 38.
2. Ibid., Section 30, sons and daughters of deceased heirs are eligible.
3. Ibid., Section 30.
4. Baumecker, op. cit., p. 343, note 39.
5. REG, Section 31.
6. Völkischer Beobachter, 1 October 1943.

IV. ORGANIZATION OF THE INHERITANCE COURTS

The Entailed Farm legislation is under the joint control of the Ministers for Food and Agriculture and Justice, each ministry having a division devoted to the administration of the law.[1]

Three grades of courts are under their control: the National Entailed Farm Court (Reichserbhofgericht), the Regional Entailed Farm Courts (Landeserbhofgerichte), and the Local Farm Inheritance Courts (Anerbengerichte).

A. The National Entailed Farm Court (Reichserbhofgericht)

The National Entailed Farm Court is the highest court of appeal and consists of three divisions (Senate) of five members each, a chairman, two legal professionals, and two peasant members. In case of disagreement between two divisions, a superior division (Grosser Senat) consisting of nine members delivers a decision.[2]

The president of the National Entailed Farm Court is the Minister for Food and Agriculture who with the Minister of Justice recommends the chairman and professional members to the Führer for appointment. The peasant members are designated by the Minister for Food and Agriculture for a three year term.[3]

1. Taschenbuch der Verwaltungsbeamte, 1942.
2. EHVO, Section 7.
3. Ibid.

The National Entailed Farm Court is not only a court of review but may consider new facts and base a decision upon them.[1] In general, no appeal from the two lower grades of courts is allowed if they concur in their decisions even if on different legal grounds.[2] Furthermore, the highest court may rescind a decision and remand it to any court for readjudication.[3]

B. Regional Entailed Farm Courts (Landeserbhofgerichte)

Regional Entailed Farm Courts are courts of second instance. The court at Celle has competence for all of the Prussian provinces, while the others correspond to areas of the Appeal Courts. In 1940 there were fourteen Regional Entailed Farm Courts as compared with twenty-six Courts of Appeal.[4]

Inheritance Courts in the Old Reich

Bamberg	Karlsruhe
Brunswick	Munich
Celle -- 5 divisions	Nürnberg
Darmstadt	Oldenburg
Dresden	Rostock
Hamburg	Zweibrücken
Jena	

The Provincial Inheritance Court at Celle (Hanover), is also competent for Anhalt, Lippe, and Schaumburg-Lippe and the one at Stuttgart has jurisdiction over the Hohenzollern areas of Haigerloch, Hechingen, and Sigmaringen.[5]

Each court is comprised of three judges and two peasants; the farmers are appointed by the president of the corresponding

1. Baumecker, op. cit., p. 789, note I
2. RdRI, 1934, p. 551.
3. EHVfO, Section 25.
4. RdRM, 1940, p. 474.
5. Baumecker, op. cit., p. 475.

Court of Appeals; for Prussia the Court of Appeals at Celle.[1] The peasant members are recommended by the National Peasant Leader and are appointed by the same Court officials.[2] and must own Entailed Farms within the area of the court on which they sit.

C. Local Farm Inheritance Courts (Anerbengerichte)

These are courts of first resort and in most instances conform to the structure of the local courts, Amtsgerichte. In 1940 there were 1,550 of which 915 were located in Prussia.[3] However, some 60 courts were consolidated between 1935 and 1940.[4]

Each court consists of a judge and two peasants. They are appointed by the Minister of Justice and the peasant members must be owners of Entailed Farms within the court's jurisdiction.[5]

The Local Farm Inheritance Courts have supervision over the list of Entailed Farms, Erbhofrölle[6] and are responsible for the admission of farms to Entail Status. All cases involving competence of the peasants, right of disposal or mortgage, are initiated in them by the Local Peasant Leader. In addition, disputes over inheritance, faulty management, breaches of honor are considered.

The higher courts receive appeals if they are permitted by the law.

1. EHVfO, Section 4.
2. Ibid.
3. Deutsche Justiz, 1936, p. 1911 and Baumecker, op. cit., p. 70.
4. Ibid.
5. REG, Section 41.
6. REG, Section 52. Every Entailed Farm must be entered in a record book which contains size, type of farm, location, and owner.

V. CONCLUSIONS

Definite commitments for a system of limited inheritance were made in the special peasant program of 1930 and it was on the basis of these that the peasant voted the Nazis the first majorities they received in the Reichstag elections under the Weimar Republic.

Furthermore, the Agrarian Organization (Agrarapparat) founded in 1930 with regional and local divisions was staffed and controlled by peasants who had a vested interest in the implementation of a program of limited inheritance, refinancing of debts, and protection against foreclosure. The Nazis therefore became prisoners of their own ideology and were forced to inaugurate this program to retain the support of their peasant followers.

The system of limited inheritance was an adjustment to the post-war agrarian crisis which arose in the late 1920's. Interest rates of 10-13 percent, a decline in prices of farm products, the foreclosure of 1,500,000 acres between 1928-1933, and an accelerated flight from the land required immediate measures to prevent the collapse of agricultural production.

If the social purposes of the system of limited inheritance are ignored, it was, unquestionably, a successful adjustment to this crisis and in view of the court statistics cited above,[1] the majority of peasant owners so considered it.

Until about 1937 this group (with the Junkers) did

1. See appendix I also.

constitute an elite, protected against the loss of their farms inherited in undivided strength.

Exigencies of a war economy have destroyed most of the privileges enjoyed or converted them into liabilities. With the exception of limited inheritance and protection against foreclosure all farm land over 1½ hectares enjoys the same protection and is subject to the same regimentation.

The ban on mortgaging is now a definite liability which imposes hardship on peasants and banking circles. The former find it difficult to borrow money and the banker is reluctant to lend because of inadequate security, i.e., on a personal note.

Two developments suggest the arbitrary exercise of power by officials at the expense of the peasants.

(a) An increase in personal debts of peasants suggests that public credit agencies in collaboration with the regional peasant leaders are lending money to the peasants; in case of default a portion of the farm products can be claimed by the agency or the regional peasant leader may institute proceedings in the Local Farm Inheritance Court to have the peasant declared incompetent. A survey of such litigation is contained in Appendix I.

(b) A concentration of control of Entailed Farms in the hands of Agricultural Trustee Unions, Inc. Landwirtschaftliche Treuhandverbände. These organizations were established in each Peasant Association to manage farms placed under trustees

because of poor management. Since 1937 in Bavaria, of the 311 trustees appointed, 104 were agents of such an institution and 50 of these agents were local peasant leaders or mayors of the communities involved. Nine of these agents were responsible for an average of 12 farms each. The inference of abuse of power is inescapable, inasmuch as the local peasant leader lodges complaints, and benefits directly by appointment as a trustee for the farm in question or indirectly through the Trustee Union with which he is affiliated.

The Entailed Farm Legislation has exerted the following additional effects upon the rural economy:

(1) The reduction in the amount of land available for sale by withdrawing 700,000 Entailed Farms from the market has caused a rise in rural land values only partially mitigated by the control of sale prices;

	Average price per hectare in the Old Reich
1932	R.M. 1032
1936	R.M. 1459
1937	R.M. 2000
1939	R.M. 1850

(2) This serves as an added obstacle to the operation of "the agricultural ladder." Prior to the Nazi regime it was possible to ascend in the rural social scale from tenant to landowner by purchasing parts of divided inheritances. That is now impossible because of the ban upon the division of Entailed

Farms and also because of the high cost of farms not included under the restrictions of the Law.

(3) A rigid caste of landowners has been established which enjoys ownership and usufruct of the land as long as they conform to the wishes of the state.

In periods of full employment the problem of the dispossessed heirs is of no great social consequence because of unlimited opportunities for employment in industrial areas.

In their case, however, because they lack any stake in the land their "flight from the land" is accelerated and shortage of agricultural labor therefore rendered more acute.

The Entailed Farm Legislation, while in conformity with the German tradition of limited inheritance is compulsory while before limited inheritance was voluntary. Under conditions of war it must be regarded as an instrument of social and economic control over a segment of the population outside the ruling group.

Its effects upon the peasantry can be evaluated only in terms of the position of the individual peasant in this picture. The owner of a farm of 100 hectares e.g. is in a better economic position than one with 10 hectares and, most important of all, the active party man enjoys immunities from many punitive measures imposed upon his less fortunate neighbors by local peasant leaders.

The peasant is not a serf nor is he a landowner in the

old liberal tradition of freedom of sale within a free market. His control of his property depends upon this conformity to the will of the state.

In conclusion, however, the Entailed Farm Legislation has not solved the most persistent demand of the peasant. Namely, that the discrepancy between farm and industrial prices be eliminated and that life on the farm be made more attractive. His debt burden has been reduced but a debt burden remains and his creditor is really the state instead of private enterprise.

Appendix I. AN EVALUATION OF THE ENTAILED FARM LEGISLATION

The Entailed Farm Legislation, admittedly, has been a source of bitter controversy. At least two different theories, as to the form of land tenure enjoyed by the peasant crystallize from a mass of literature on the subject.[1]

a. The peasant enjoys usufruct only or the Entailed Farm is under a three-fold trusteeship of the German People, the Food Estate, and the Clan. In similar vein is the theory that an Hereditary Farm is held as a fief from the people, Volkslehen.[2]

b. "The Hereditary Farm cannot be regarded as entirely excluded from private exchange."[3]

The best index not only to the nature of peasant rights in the land but also to reception of the legislation by the farmer is the court decisions, especially those involving the loss of complete or partial use of the land by the Hereditary Farm owner and litigation comprehending the sale, lease, or mortgage of Entailed Farms.[4]

1. The first two are mentioned in Baumecker, Op. Cit. p. 120.
2. Roland Freisler, "Das Bauernrecht," Pariser Zeitung, 19 May 1943, p 1. H. Spiegel calls the Entailed Farm Legislation a new form of feudalism. Land Tenure Policies at Home and Abroad, passim.
3. This was the position taken by the National Inheritance Court RdRN, Jan. 1937.
4. The laws involved have been discussed above under the headings of the appointment of trustees for Economic Management or supervision and restriction on disposal.

It is assumed that a high frequency of such cases may be considered as an indication of peasant dissatisfaction with the Entailed Farm Law.

In the period through the first half of 1936 a moderate degree of dissatisfaction is indicated. At this time there were 635 cases pending in the local inheritance courts encompassing the transfer of usufruct of Entailed Farm land under section 15 of the basic law of 1933. This section provides for the transfer of administration and usufruct where peasants are incompetent or have violated the honor of their estate.[1]

Of the 958,511 farms examined up to July 1936 as eligible for Entailed Farm Status, 239,941 or 25 percent were deemed unsuitable.[2] In the same period 84,388 cases involving approval of the disposal, mortgaging, or leasing of Entailed Farms were in litigation before the local courts.[3] The total number of cases pending before the local inheritance courts in 1936 was distributed as follows:[4]

84,388	cases	involving	mortgage, lease, or sale
635	"	"	honor and competency
508	"	"	inheritance disputes
85,551	total number of cases adjudicated		

In other words 12 percent of the Entailed Farms were involved in litigation of the types mentioned.

1. Karl Hopp. "Erbhofrecht in Zahlen". Deutsche Justiz 16 October 1936, pp. 1564-65.
2. Ibid.
3. Ibid.
4. Ibid.

For the same perici only 89 cases embracing the competence of the peasant and permission for sale were appealed to the provincial inheritance courts and National Entailed Farm Court.[1] This small number is to be explained in terms of the peasant's belief in the futility of appeal plus satisfactory settlements in a large number of cases.

For the period after 1938, information is more limited[2] and one must rely upon two sources; the Weekly Bulletins of the Peasant Associations (Wochenblätter der Landesbauernschaften) and Law of the Food Estate (Recht des Reichnahrstandes).[3]

In 1937[4] measures were introduced for the appointment of trustees to supervise or administer Entailed Farms. These ordinances provided for the appointment of trustees by the Loca Inheritance Courts to supervise (Wirtschaftsüberwachung) or to regulate (Wirtschaftsführung)badly managed Farms.[5]

1. RdErn 1934-1938.
2. No complete statistics have been published in Deutsch Justiz since 1936.
3. The first is the official bulletin of the regional divisions of the Food Estate; the second the official legal journal of the Food Estate.
4. EHVO section 73-84, 23 March 1937 and EHVO, 22 April 1937.
5. Ibid section 73. Wirtschaftsfuhrung was introduced after the failure of the first penalty.

A third alternative was the withdrawal of Administration and Usufruct, (Verwaltung and Nutzniessung) in favor of an heir or a trustee if the peasant had lost competency (Bauernfähigkeit).[1]

The table below contains the number of such cases in which these ordinances were applied against erring peasants.

Number of Cases in the Local Inheritance Courts of Nine Peasant Associations 1937-1943[a]

Peasant Association	Total	Economic direction	Loss of administration and usufruct	Expulsion	Total number of entailed farms
Westphalia	18	11	7	--	36,947
Rhineland	21	16	5	--	18,149
East Prussia	41	38	3	--	49,789
Württemberg	54	39	15	--	24,400
Saxony	171	112	59	3	36,161
Lower Saxony	145	115	30	--	--[b]
Lower Silesia	205	163	19	3	--[b]
Silesia	254	197	55	2	52,199
Bavaria	311	241	68	2	159,811
	1,529	1,157	302	10	377,456

a The time span varies for each of the Peasant Associations: for Westphalia, two years and four months; Lower Saxony, 1937-39; Lower Silesia, two years and fifty weeks, 1940-43; Württemberg, four years and ten months; East Prussia, three years and eleven months; Rhineland, four years and four months; Silesia, four years and six months, Saxony, four years and six months; Bavaria, five years and seven months.

b. The statistics do not correspond to regional divisions cited here. Several changes have been made in the Peasant Associations which cannot be represented here because the Weekly Bulletins of the Peasant Associations have not changed their area of distribution to conform to these changes.

1. EHVfG, Sections 85-98.

The incidence of court decisions is manifestly low and in most instances amounts to about one case to every 100,000 Entailed Farms in the regions of the nine Peasant Associations listed. Even if the total number of cases available,[1] i.e. from 1934 to 1943, is balanced against the total number of Entailed Farms in 1938, we find that only 13 percent were involved in litigation of the type which might suggest vulnerabilities in the system of limited inheritance.[2]

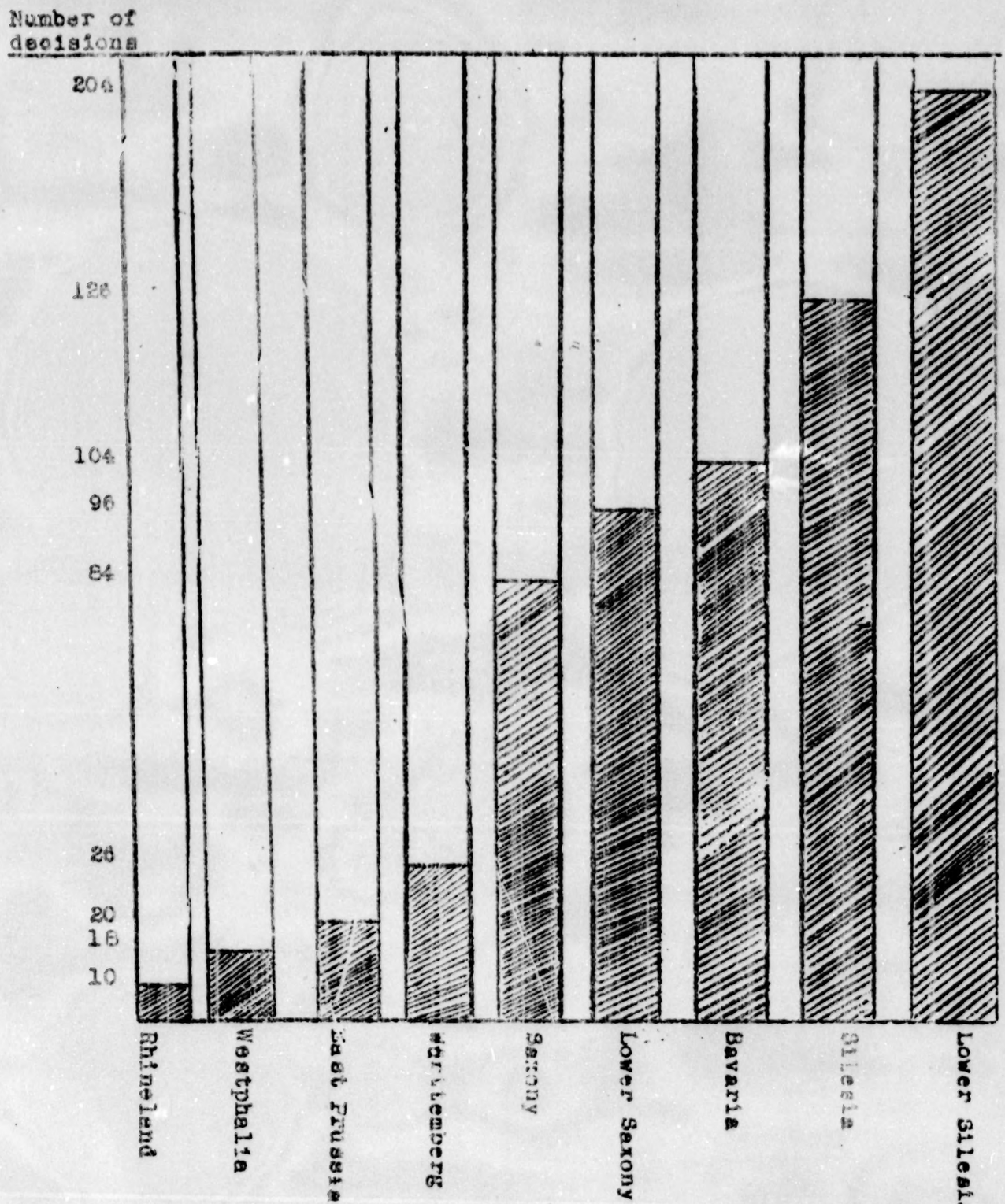
The total number of farms included in these cases does not compare at all favorably with the 1,500,000 acres involved in compulsory auction proceedings between 1928 and 1933.[3]

The accompanying chart shows the incidence of decisions involving the appointment of trustees for Entailed Farms in Nine Peasant Associations.

There are great extremes in the frequency of cases im the nine different Peasant Associations. The chart illustrates this fact.[4] The small number of cases in the Rhineland and

1. This includes those from Deutsche Justiz for 1936 Recht des Reichnährztandes 1934-1941 (April) and the Wochenblätter of Nine Peasant Associations, 1937-1942.
2. Even if the average number of decisions for the period is taken as a national average, there is no appreciable change in the percentage of cases to the total number of Entailed Farms.
3. Lamartine Yates. Food Production in Western Europe, p. 486, i.e. auction for default on debt payments.
4. The chart is based upon the average number of cases for a two-year period, the minimum span for which information is available for Westphalia.

THE INCIDENCE OF LOCAL FARM INHERITANCE COURT DECISIONS INVOLVING PEASANT COMPETENCY IN NINE PEASANT ASSOCIATIONS



Westphalia is due to the predominance of small farms below the minimum Entailed Farm acreage; only 11 percent of the Farms of Württemberg are Entailed. East Prussia has a high percentage of Entailed Farms (36 percent), but the incidence of court decisions is low, first because the average size of Entailed Farms is high (21 hectares) and they are thus better able to produce a profitable surplus and secondly because the number of settlement farms which have become Entailed Farms is large. The position of this group has been superior to that of the older farmers from the point of view of facilities for efficient production. Finally the social controls over the peasant population are more complete than in the west; consequently little open resentment against the law is to be expected.

Silesia[1] has been the center of the highest incidence of court decisions of the type discussed above. In 1936 it had one-fourth more cases in litigation than the other regions in Germany[2], while for the entire period considered, the number of cases exceeded the nearest competitor by over 100.

The most plausible explanation of the high figure for Silesia is that in 1937 it had a debt burden of RM 900 for

1. Lower Silesia is no longer a separate Peasant Association but is a part of Silesia.
2. Deutsche Justiz, loc. cit, p. 1543.

every hectare of arable land; the highest for all of rural Germany.[1] Hence many of the cases involved appointment of trustees for farms whose owner had lost competence, i.e., failed to pay their debts.

A similar explanation applies to Saxony and Saxony-Anhalt which were second and third respectively in the amount of debt per hectare.[2]

In Bavaria, the high percentage of Entailed Farms and the prevalence of the Mountain Pasture Economy (Almwirtschaft), mountain farms with low productivity, explain the large number of cases.

A regional break-down of the incidence of local court decisions involving the competence of the peasant or the honor of the peasant estate may be of some significance in indicating vulnerability areas.

Quantitatively this incidence is not high but of consequence from a relative point of view.

The following figures reveal the location of areas of local inheritance courts in which five or more cases of faulty management or incompetence have occurred in the last five years.

1. Deutsche-Rentenbank Kredit-Anstalt. Die Kreditlage der deutschen Landwirtschaft, 1936/37.
2. Ibid.

REGIONAL INCIDENCE OF COURT DECISIONS ACCORDING TO AREAS OF LOCAL INHERITANCE COURTS[a]

Area	Number of cases
Lower Saxony	
Eschershausen	5
Schöppenstedt	4
Königslutter am Elm	7
Lüchow	9
Stade	7
Tostedt	5
Uelzen	8
Walsrode	5
Bassum	9
Uchte	8
Bremervörde	10
Burgwedel	5
Hoya an der Weser	7
Saxony-Anhalt	
Bad Lauchstädt	7
Halberstadt	7
Merseburg	5
Calbe (Saale)	8
Sangerhausen	7
Bad Liebenwerda	7
Lützen	5
Saxony	
Lauenstein	5
Sebnitz	7
Pirna	6
Radeberg	5
Stollberg (Erzgebirge)	8
Bautzen	9
Waldheim	6
Dippoldiswalde	6

a. Average period covered four and one-half years for each area.

Area	Number of cases
Silesia	
Neumarkt	15
Ohlau	10
Striegau	9
Görlitz	21
Oels	22
Schweidnitz	14
Freiburg	8
Freystadt	14
Militsch	17
Landshut	12
Trebnitz	17
Löwenberg	5
Rosenberg	7
Glatz	6
Trachenberg	7
Grottkau	6
Glogau	11
Bavaria	
Dorfen	8
Landshut	6
Landau (Isar)	9
Dillingen	7
Kempten	23
Weilheim	10
Ingolstadt	20
Moosburg	6

Appendix II. JOINT PUBLIC ANNOUNCEMENT OF THE MINISTER FOR FOOD AND AGRICULTURE AND THE MINISTER OF JUSTICE, 28 SEPTEMBER 1940[1]

(This announcement defines the areas of inheritance by the youngest heir in a given order of inheritance, Jüngstenrecht or of the eldest, Aeltestenrecht.)

A. Appeal Court District of Bradenburg, Kammersgerichtsbezirk

(Section 21, paragraph 3 of REG provides that within the same order of inheritance selection of an heir depends upon the prevalence of the custom of Youngest or Oldest right to inheritance. If no definite custom prevails the youngest inherits.) Under the terms of this paragraph, the oldest right has prevailed.

(Section 25, paragraph 1 provides that a testator may, within the first order of inheritance, designate the heir if limited inheritance was not the custom in his district or if the right of free designation was prevalent.) Under the terms of this section free decision has been customary.

B. Appeal Court District Bamberg, Oberlandesgerichtsbezirk

1. Re §21 par. 3 REG, oldest right has been the custom in the Inheritance Court districts, Anerbengerichtsbezirken, Aub and Miltenberg; also in Ochsenfurt with the exception of the following communities: Bibelstadt, Frickenhausen bei Ochsenfurt, Gossmannsdorf am Main, Kleinochsenfurt, Ochsenfurt, Marktbreit, Segnitz, Sommerhausen, and Winterhausen. In the other parts of the Oberlandesgerichtsbezirk a definite custom has not

1. Recht des Reichsnährstandes, October 1940, page 549.

prevailed. (Hence the youngest right obtains)

2. Re #25 Par. 1, REG, in the entire district free determination of the heir has been usual or the law of limited inheritance has not been the custom. (The right of selection of the heir therefore prevails.)

C. Appeal Court District Brunswick, Braunschweig

1. Re # 21 par. 3, oldest right has been the custom except in the following areas where no definite custom applies; district of the inheritance court Hassefelde and the district of the lower court of Walkenried which belongs to the district of the inheritance court of Seesen: free decision has prevailed in the region of the local court, Amtsgericht of Walkenried. (#25 par. 1 applies in this latter district only).

D. Appeal Court District Celle

1. Re #21 Par. 3, oldest right applies except in areas of the inheritance courts of Bersenbrück and Quakenbrück where the youngest right prevails: no definite custom obtains in the region of the county court, Landgerichtsbezirk Aurich or within the region of the inheritance courts of Bramsche, Cuxhaven, Dorum, Lad-Essen, Freiburg (Elbe), Herzberg(Harz), Iburg, York, Melle, Neuhaus(Oste), Osnabrück, Osten, Osterode (Harz), and Otterndorf.

2. Re #25 Par. 1, free decision of an heir is customary only in the first two groups, i.e., through Quakenbrück.

E. Appeal Court District Darmstadt

1. Re # 21 par. 3, oldest right has been the custom except

in the entire district of the county court of Mainz (earlier Rhinehessen province) where no definite custom has existed. Other regions where no definite custom has existed are the following areas of the local inheritance courts of Dieburg, Gross Gerau, Gross Umstadt, Lampertheim, Langen, Offenbach, Rheinheim, Seligenstadt, Bad Wimpfen and in the following parts of the county court district of Giessen (the earlier province of Oberhessen), districts of the inheritance courts of Altenstadt, Butzbach, Friedberg, Giessen, Laubach, Bad Nauheim, Nidda, Ortenberg, Vilbel.

2. Re #25 Par. 1, free decision or limited inheritance has been the custom.

F. Appeal Court District Dresden

1. Re #21 par. 3, no definite custom prevailed.

2. Re #25 par. 1, free determination by the peasant has been the custom.

G. Appeal Court District Dusseldorf

1. Re #21 par. 3, the oldest right has prevailed in the district of the provincial court of Duisburg.

No definite custom has existed in the other parts.

2. Re #25 par. 3, free decision has prevailed except in the district of the provincial court of Duisburg.

H. Appeal Court District Frankfurt (Main)

1. Re #21 par. 3, no definite custom.

2. Re #25 par. 1, limited inheritance has been the custom.

I Appeal Court District Hamburg

1. Re #21 par. 3, oldest right has prevailed

2. Re # 25 par. 1, free determination has been customary.

J. Appeal Court District Hamm

1. Re #21 par. 3, oldest right has existed except in areas of the local inheritance courts of Bielefeld, Bünde, Delbrueck, Gütersloh, Halle (Westphalia), Herford, Lübbecke, Bad Oeynhausen, Rehden, Rietburg, Tecklenburg, Vlotho, Wiedenbrück; in the following communities of the local inheritance court of Ibbenbüren, Mettingen and Wissenbeck; the following communities of the local inheritance courts of Minden, Barkhausen, Bomhorst, Dutten, Eickhorst, Eisbergen, Haddenhausen, Haverstadt, Hausberge, Holzhausen, Rohstedt, Lohfeld, Oberlubbe, Rothenuffeln, Unterlubbe; in the following communities of the inheritance court of Arendorf, Harswinkel and Marienfeld. In these areas the right of the youngest obtains.

No definite custom has existed in the local inheritance court areas of Altenkirchen, Herborn, Hilchenbach, Siegen and Wissen.

2. Re #25 par. 1, limited inheritance has not been customary in the districts mentioned in 1. through Marienfeld.

Only in the area of the provincial court of Hagen and of the local inheritance courts of Marsberg and Medebach has free decision of heirs been customary.

K. Appeal Court District of Jena

1. Re #21 par. 3, the oldest right has prevailed in the area of the local inheritance court of Geisa. The youngest

in the area of the provincial court of Altenburg. In the remainder of the region no definite custom has existed.

2. Re # 25 par. 1, with the exception of Geisa and Altenburg free determination has prevailed or limited inheritance has not been the custom.

L. Appeal Court District of Karlsruhe

1. Re #21 par. 3, the oldest right prevailed in the area of the local inheritance courts of Messkirch, Pfullendorf, and Überlingen; also in Tauberbischopheim (part of the area of the local inheritance court to the east of the Tauber); in the following communities of the local inheritance court of Achern; Buhlertal, Furschenbach, Kappelrodeck, Lauf, Neusatz, Obersasbach, Ottenhofen, Sasbachwalden, Seebach, and Waldulm; the following communities of the local inheritance court of Buchen; Buchen, Erfeld, Glashofen, Hainstadt, Heidersbach, Hettigenbeuren-Hornbach, Hollerbach, Laudenberg, Mudau, Scheidental, Schlossau, Steinbach, Waldhausen, Walldurn and Wettersdorf; in the following communities of the local inheritance court of Heidelberg; Altenbach, Altneudorf, Heidesbach, Heiligkreuzsteinach, and Lampenheim.

No definite use prevails in the other areas.

2. Re # 25 par. 1, in the entire district either free decision has obtained or limited inheritance has not been customary.

M. Appeal Court District of Cassel

1. Re #21 par. 3, oldest right prevailed except in the areas of the local inheritance courts of Bergen-Enkheim,

Biedenkopf, Eschwege, Grossalmerode, Hanau, Hessisch Lichtenau, Lagenselbold, Rotenburg, Sontra, Bad Sooden-Allendorf, Windecken and Witzenhausen, where the youngest right exists.

2. In the entire area free determination has been customary or limited inheritance did not obtain.

N. Apreal Court District of Kiel

1. Re #21 par. 3, the oldest right prevailed except in the areas of the local inheritance courts of Schonberg (Holstein), Bad Bramstedt (except the communities of Sievershutten and Stuvenborn); in the area of the local inheritance courts of Kiel, Lubeck (Brodten, Genin, Herrenwyk, Dummersdorf, Ivendorf, Kucknitz, Moorgarten, Niederbussau, Oberbussau, Poppendorf, Ronnau, Siems-Danischburg, Schultup, Teutendorf, Travemunde, Vorrade, Wesloe); in the area of the local inheritance court of Preetz (the communities Barmissen, Grossbarkau, Honigsee, Kirchbarkau, Nettelsee, Pohnsdorf, Postfeld, Preetz, Schellhorn, Warnau.

In Bad Schwartau, the villages of Curau, Dessau, Grammersdorf, Havn, Krumbeck, Malkendorf, Warmsdorf and Wilmsdorf; in Bad Segeberg; Altengors, Bad Segeberg, Bark, Bebensee, Blunk, Bornhoved, Fahrenkrug, Fehrenbotel, Fredendorf, Geschendorf, Gonnebek, Grose Niendorf, Gross Ronnau, Hamdorf, Hartenhol, Hogersdorf, Klein-Gladebrugge, Klein Ronnau, Kukels, Leezen, Lielsdorf, Mozen, Negernbotel, Neuengors, Neversdorf, Schackendorf, Schieren, Schmalensee, Schwissel, Sohren, Stipsdorf, Strukdorf, Todesfelde, Traventhal, Wahlstedt, Weede, Wittenborn, Westerrade. Youngest right prevails in these regions.

No definite usage obtains in the local inheritance court areas of Bruusbruttelkoog, Garding, Gluckstadt, Heide, Marne, Meldorf, Nieball, Tonning, Wesselburen, Westerland, Wilster, Wyk am, Fohr; in Bredstedt the communities of Bargum, Bordeling, Bredstedt, Langenhorn, Ockholm, Neuessenkoog; in Friedrichstadt the communities of Bargen, Flehde, Groven, Krempl, Lede, Lunden, Rehm, and Sankt Annen; in Husum the communities of Elizabeth-Sophiekoog, Haltstedter Marsch, Hooge, Nordstrand, Pellworm, and Simonsberg; Itzehoe, the communities of Barenfleth, Bekhof, Bekmunde, Heiligenstedten, Lodorf, Krummendiek, and Moorhusen. In Krempe the communities of Altenmoor, Barsfleth, Elskop, Grevenkop, Kiebitzriehe, Krempe, Krempdorf, Neuenbrook, Sommerland, and Suderau.

2. Re #25 par. 1, free determination has been the custom in the areas mentioned above through Westerrade.

C. Appeal Court District of Cologne

1. Re # 21 par. 3, no definite usage prevails.

2. In the entire area free determination has existed or limited inheritance has not been the custom.

F. Appeal Court District Königsberg

1. Re #21 par. 3, oldest right has been the custom.

2. Re #25 par. 1, free determination has been the custom.

4. Appeal Court District of Marienwerder.

1. Re #21 par. 3, the oldest right has been the custom.

2. Re #25 par. 1, free determination has prevailed.

R. Appeal Court District of Munich

1. Re #21 par. 3, the oldest right has been the custom.

2. Re #25 par. 1, free determination has been the usage.

S. Appeal Court District Magdeburg

1. Re #21 par. 3, oldest right prevails in the area of the provincial courts of Dessau, Halle, Halberstadt, Magdeburg, Stendal, Torgau, and of the local inheritance courts of Sangerhausen and Stolberg (Harz). No definite usage prevails in the remainder.

2. Re #25 par. 1, free determination obtained or limited inheritance did not prevail.

T. Appeal Court District of Nurnberg

1. Re #21 par. 3, oldest right has been the custom.

2. Re #25 par. 1, free determination has prevailed.

U. Appeal Court District of Rostock

1. Re #21 par. 3 oldest right has been the custom.

2. Re #25 par. 1, free determination has not been the custom.

V. Appeal Court District of Oldenburg.

1. Re #21 par. 3, oldest right has been the custom in the areas of the local inheritance courts of Clappenburg, Damme, Friesoyth, Loningen, Mildeshausen, Westerstede, Vechte, Varel, Oldenburg except the community of Hude.

The youngest right prevailed in Brake, Nordenham, Elsfleth, Delmenhorst, and Hude in the area of the local inheritance court of Odenburg. No definite use prevailed in the area of the local inheritance court of Jever.

2. Re #25 par. 1, free decision obtained in Jever only.

IX. Appeal Court District Stettin

1. Re # 21 par. 3, oldest right has been the custom.

2. Re # 25 par. 1, free determination has been the custom.

X. Appeal Court District of Zweibrücken

1. Re #21 par. 3, no definite usage has prevailed.

2. Re #25 par. 1, limited inheritance has not been the custom.